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SOCIAL CONTROL OF THE DOMESTIC RELATIONS

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For four centuries the ancient constitution of the household has been in process of dissolution; and for the same period society has been striving to put in its place new forms of control. By "household," I mean, in all its wide implications, the trinity of institutions, marriage, family, and the home; and by its "constitution" I understand the vast complex of relations, internal and external, arising in Nature's triad of personalities, the father, mother, and child.

Now, in America this dual process of constitutional decay and substitution is far advanced. Here the remnants of the old patriarchal authority are swiftly passing. Here the wife is gaining a more even place in the connubial partnership. Here precocious youth is often too soon "emancipated." Here the voluntary and state experiments in child-saving are many and daring. Here the household economist and the sociologist are joining hands in the earnest effort to create better methods of home building and higher ideals of family living. At last there are distinct signs of an awakening of the social consciousness and of the social conscience to the cardinal truth that the household, as just defined, is the basic fact in our national life, and hence the dynamic factor which ultimately, for good or for ill, must determine the quality of American civilization.

Nevertheless, the American people have as yet no thought-out or comprehensive policy for developing a proper social control of the domestic relations. This is the simple truth which I wish to emphasize in this paper. We have many "movements," we are doing many things—some wise and some otherwise—to secure such control in this or that direction; but our efforts are not correlated or wisely economized. Reform goes on more or less at random in the various cities and states. What expert

social servant, for instance, can tell without research how many varieties or instalments of the social control of parental authority, or of marriage relations, or of home economics, or of domestic hygiene have already been established by law? or which of them have stood the test of actual experience? or what new projects are arising?

A "HOUSEHOLD PROGRAM"

In a word, is it not high time to construct a scientific program for the promotion of the right social control of the domestic relations? The "Municipal Program" worked out by experts several years ago has borne good fruit. Is not a "Household Program" quite as urgently required? Such a program is not the business of an hour. Its genesis might well engage the earnest attention of this society. Its final construction would be a task worthy of a conference of the leaders of American social science and American social service.

A brief discussion of several questions, as examples, may perhaps reveal the nature and magnitude of the problem which such a concerted policy would help to solve. What basic influences, for instance, are causing the dissolution of the mediaeval constitution of the household and the rise of new forms of social control? In what directions is there a growing demand for the further extension of social control? Is it possible to construct a new system of education, broad enough and intensive enough to provide efficient training for the business, the obligations, and the domestic relations of the household? If that should be accomplished, may we safely restore to the family group some portion of the functions which we are now taking from it?

WHY THE MEDIAEVAL HOUSEHOLD CONSTITUTION IS BEING DISSOLVED

To the student of modern history the gradual change in the household constitution appears clearly as a process of social liberation which is profoundly affecting the relative positions of man and woman, of parent and child, in the family and in

society. With respect to right and privilege and social values the sex-line is being wiped out. There is a tendency more and more to recognize the equal spiritual worth of each personality in the family group. More and more, wife and child are being released from the power of the housefather and placed directly under the larger social control. The new solidarity of the state is in part being won at the expense of the old solidarity of the family. The tie which binds its members together is ceasing to be juridical and is becoming spiritual. Essentially the family society is becoming a psychic fact. Beyond question, this process of dissolution and readjustment, although attended by some evil, is producing a loftier ideal of the home and of the marital union, a juster view of the relative shares of the sexes in the world's work.

Thus the assault upon the surviving remnants of the patriarchal authority following the Reformation has inured to the benefit of the state. It is a process of individualization for the sake of socialization. In another way, too, the state was the gainer by the Protestant Revolution. Under the leadership of Martin Luther a fatal blow was struck at ecclesiastical control of the marriage relation. Slowly, almost reluctantly, Luther made up his mind to repudiate the sacramental dogma of wedlock. Marriage, he declared, is a "temporal worldly thing" which "does not concern the church." It was a righteous revolt against the absurdity, cruelty, and wickedness of canon-law theory and practice in matrimonial causes.

ORIGIN OF SOCIAL CONTROL OF MARRIAGE

Moreover, this revolt involved a new doctrine of social control, of the function of the state, which is of deep interest to sociologist and political scientist alike. In principle, by accepting Luther's dictum, marriage and the family were recognized as social institutions, to be dealt with freely by men according to human needs. Assuredly no more harmful blunder was ever committed by theological subtlety than the setting apart of marriage as *par excellence* the divine institution. A stumbling-block was thus put in the way of social progress.

Yet how tenaciously many good people cling to the old teaching! They resent the interference of the bold sociologist with the privileged matrimonial institution.

On the other hand, while fatalism, mob-mind, is still singularly powerful in the whole field of the domestic relations, notable progress has been made in recent years. In college departments of sociology and household science, in normal and even public schools, the problems of sex, marriage, and the family are beginning to be studied in connection with the actual conditions of modern social life. We are coming to realize how vain is the appeal to ideals born of old and very different conditions; that the guiding light will come, not from authority, but from a rational examination of the existing facts. Small progress can be expected while leaning upon tradition. The appeal to theological criteria, no doubt, is matter of conscience on the part of many earnest men. Nevertheless, the vast literature which seeks to solve social problems through the juggling with ancient texts seems in reality to be largely a monument of wasted energy. Much of it is sterile or but serves to retard progress or to befog the issue. Truly, there is urgent need that the moral leaders of men should preach actual instead of conventional social righteousness! It is high time that in school and college the family and its related institutions should be as freely and openly and unsparingly subjected to scientific investigation as are the problems of modern political and industrial life. There is no evading the fact that among the rank and file of the people prevails a vast ignorance of true social origins and of the true causes of social change.

GROWTH OF SOCIAL CONTROL

The repudiation of the sacramental sanction and the decline of the patriarchal authority cleared the way for the social control of the domestic relations. It was now inevitable that for its own protection the state should institute civil marriage and its counterpart, civil divorce. First in Holland, then in the New England colonies, and at length throughout the occidental world this great task has been accomplished. With what degree of

wisdom the American lawmaker has performed his part may later be considered.

The assumption by society of full responsibility for the marriage contract is the first great step in the establishment of its control of the household. Equally significant is the second step. With the rise of democratic self-government, it soon became clear that as a safeguard for liberty the state must provide for the elementary education of her children. By public taxation to give the opportunity was not enough. Selfish or ignorant parents could not be trusted to make proper use of it. So its acceptance was made compulsory by statute. The state now freely enters the home and for a considerable portion of each working day during the school year takes the child out of the parents' hands and intrusts it to the care of the teacher.

PUBLIC BREAD AND THE PUBLIC SCHOOL

Moreover, there are distinct signs that in the school child's behalf the state is about to extend its interference with the parental régime. Of late we are coming to realize how large and sinister a rôle hunger plays in the fate of the children of penury. Several years ago Robert Hunter estimated that in normal times 2,000,000 American children of school age are in poverty. How many hundred thousand of these go breakfastless to school! Does not the situation call for state intervention? In fact, it is already being urged by thoughtful men that in a vast number of cases public bread is the needful complement and the just guaranty of public education. Compulsory education at public expense is wasted on a hungry child. In some of our cities and in some foreign lands, as you are aware, the beginnings of a policy such as that just hinted at are already in hand.

COMPULSORY SOCIAL HYGIENE

The school child cannot live by bread alone. Although saving him from malnutrition may tend to shield him from a horde of deadly maladies, is it not needful that society should safeguard his health by more direct action? Already the problem of efficient medical inspection has arisen. Should there not be

an earnest effort to solve it in a broad scientific way? State-wide medical inspection of schools has been made compulsory in Massachusetts; while elsewhere voluntary inspection exists in many cities. The law now enforces vaccination and quarantine. Its inspector goes into the tenement to prevent the factory from turning the home of the poor into a sweatshop. Shall he not have like power, in case of need, to enter both home and school in order to conserve society's precious vital resources, the bodily welfare of the rising generation? In a word, with respect to the home and the school, in their necessary relations, would it not be a worthy task for the practical sociologist and the household scientist to work out a safe but efficient scheme for compulsory social hygiene? If necessary in this regard should not the home be safeguarded at public expense?

MODERN INDUSTRY A MENACE TO THE FAMILY GROUP

It is obvious, as the foregoing discussion implies, that a chief cause of the swift expansion of the state control of the domestic régime is the neglect or inability of parents to care properly for the nurture of their children. Society finds it needful to remove the child from the environment of the derelict home. This is due largely to the dissolution of the solidarity of the family group through the industrial revolution. With the rise of corporate and associated industry in the place of household industry comes a weakening of the intimacy of home ties. Through the factory and the division of labor the family hearthstone has often become a mere temporary meeting-place of the individual wage-earners. The congestion of population in cities is forcing into being new and lower modes of life. The tenement is destructive of the home. Neither the "lodging-house," the "flat," nor the "apartment" affords an ideal environment for domestic joys. In the vast hives of our great urban centers even families of the relatively well-to-do have small opportunity to flourish—for self-culture and self-enjoyment. To the children of the slum the street is a perilous nursery. For them squalor, disease, and sordid vice have frequently supplanted the traditional blessings of the family sanctuary.

The cramped, artificial, and transient associations of the boarding-house are a wretched substitute for the privacy of the separate household.

Accordingly, for the reasons just suggested, and because with increasing light we are able to see faults in household nurture which have always and everywhere existed, a many-sided movement for child-saving has arisen. Minor children are no longer looked upon as the absolute property of the father. A legal ban is being placed upon child labor. Society forbids their employment in mines, factories, or other injurious vocations during their tender years. Under child-saving laws, they may even be removed from home, when they are cruelly treated or exposed to vicious influences, and placed under the protection of the state. For this purpose have been established orphans' asylums, boards of children's guardians, placing-out systems, and societies for the prevention of cruelty.

THE JUVENILE COURT AND THE HOME

Especially significant of the modern trend and purpose of social control is the intervention of the state on the behalf of the delinquent child. In particular, the American may well take pride in the invention of the juvenile court. In how many ways are the paternal care and authority of the children's judge being used to save them from suffering, vice, and crime! The new policy recognizes that the delinquent child is the victim of bad social conditions, often of bad home environment. How rapidly are the powers and functions of the judge expanding! Parents are being forced to perform their elementary obligations to their children. At a recent session of the court in the town where I dwell nine fathers were virtually commanded by the court to have their children's eyes treated for trachoma. In Nebraska, happily, through the benign influence of the detention home, the state "industrial" schools are losing their population. As usual, undisciplined sentiment criticizes this new interference with the home and parental authority. Yet it seems almost certain that the powers of the juvenile court will be increased. No doubt there is some danger in the process.

As a safeguard, should not an organized effort be made to develop a thought-out policy and more uniform laws among the states? In particular, should not the precedent set by Kentucky in 1908 and by Colorado in 1909 be followed throughout the land? These states have provided for the enforcement of the obligations of delinquent parents in the chancery rather than the criminal branch of the juvenile court.

THE MODERN HEROD

Out of old Hebrew days comes to us a voice of great authority commanding children to honor their parents. The command is good; and there is urgent need that it be heeded by precocious American youth. Yet from the enlightened social conscience of the present arises a second voice, not less imperative, commanding parents to honor their children. In default of obedience, the state in so many ways has become an "over-parent" to the neglected child. There is more work for it to do. The pitiful story of infant mortality shows that thus far social control has signally failed to protect the innocent and the helpless. It is heartrending and should quicken the public conscience to read the city death roll of children under five years of age. These are the preferred sacrifice to malnutrition, foul air, patent medicine, poisoned drugs, improper food, and ignorant parental control. Even in these tender years, commercialism and child labor are claiming their share of the prey. Bad social conditions are the modern Herod who is slaughtering the innocents on an enormous scale. Shall not the enlightened teacher and the enlightened magistrate with increased authority come to their relief?

STATE ENDOWMENT OF MOTHERS

Moreover, in our time, a third voice, each day mounting clearer and more insistent, is calling upon society to honor the mother. Here is the true race-altruism. As a matter of fact the state, in taking upon itself, in so many ways, the duties of "over-parent," has been carrying out a part of the socialist program. Shall it put in force a second part of that program

by recognizing parentage as a social service, a social duty, which should be paid for at public expense? Shall motherhood be endowed by the state? "Parents who do their duty," says Mr. H. G. Wells, "are as much entitled to payment and economic security as a soldier, a judge, or any other sort of public servant"; and he draws this picture of domestic policy under the socialist régime:

[When] a woman is likely to become a mother [if duly reported by her medical adviser] her special income as a prospective mother in the state will begin. Then when her child is born, there will begin an allowance for its support, and these payments will continue monthly or quarterly, and will be larger or smaller according, first, to the well-being of the child, and secondly, to the need the state may have for the children—so long as the children are in their mother's care. All this money for maternity will be the wife's independent income, and normally she will be the house-ruler, just as she is now in most well-contrived households. Her personality will make the home atmosphere; that is the woman's gift and privilege, and she will be able to do it with a free hand.

To me the ideal here suggested looks very much like social justice. I wonder if it looks the same to those of you who in our great cities are striving to safeguard motherhood among the laboring poor?

IMPROVEMENT OF THE HUMAN BREED

Let us draw nearer to the genesis of the domestic relations. In the effort through social control to reconstruct the household constitution, what aid may come from the new science of eugenics, the science whose aim is the improvement of the human breed? Surely there is need of help; for in the mating of human beings we have been less careful than in the breeding of domestic animals. No doubt positive eugenics, applying the laws of heredity, is destined to play a useful rôle in promoting wiser selection in wedlock. At present, however, public interest centers more in negative eugenics, the experiments now being tried to prevent the propagation of the unfit. While the debate among experts is still undecided, it may be too early to judge whether the sterilization of criminals, sanctioned by law in several states, notably in Indiana, will prove a safe or an

efficient method of social control. There is more hope from restraining the marriages of the physically and mentally defective classes, especially of those tainted by heredity or sexual disease.

THE GREAT BLACK PLAGUE

One or two salient facts will show how imminent is the danger from the great black plague. According to the careful estimate of Prince Morrow, "fully one-eighth of all disease and suffering comes from this source." Each year, in our country, 770,000 males reach the age of early maturity; and every year under existing conditions 450,000 of these young men are tainted by the great black plague. If such is the venereal male morbidity for a single year, how vast must be the aggregate cumulative ravages of this destroyer. Moreover, innocent wives and mothers must pay the penalty. "There is abundant evidence to show," declares Mr. Morrow, "that 80 per cent of the deaths from inflammatory diseases peculiar to women, 75 per cent of all special surgical operations performed on women, and over 60 per cent of all work done by specialists in diseases of women" are from this source; "while 50 per cent or more of these infected women are rendered absolutely and irremediably sterile." Frightful as is the slaughter by the great white plague, the victims of the great black plague are believed to be several times as many. Here is a clarion call for social control, both voluntary and compulsory. Such laws as that proposed in Vermont for obligatory notification of venereal diseases, or the drastic statute enacted by Washington two years ago, requiring physical examination before marriage, may have their full justification in facts such as these.

A BAD MARRIAGE CODE

Finally, it is needful that society should make an effort to increase the stability of the family. That the marriage tie is lax recent discussions of desertion and of divorce for this and other causes has abundantly shown. One means for securing greater stability lies ready to our hand: the complete revision of

our marriage laws. A good civil marriage code tends to check hasty, clandestine, frivolous, and immature wedlock. A bad marriage law favors such unions, which so often end in the divorce court. Now, it may reasonably be doubted whether any people in occidental civilization has marriage laws so defective as ours. Almost every conceivable blunder has been committed. We need a uniform marriage law much more than a uniform divorce law. It is much to be regretted that the proposed congress on this subject has not been held.

As a preliminary to further reform—to clear the field of a practice subversive of all constructive legislation—the common-law contract should be utterly abolished. Practically all the hardship and social anarchy caused by the canon law at its wickedest survives in our “common-law marriage.” Each state not already emancipated ought to enact a statute, as clear and decisive as that of Kentucky, Utah, or New York, repudiating a custom which legalizes and virtually invites impulsive, impure, and secret unions.

Next, the substance or body of our state enactments should be purged of their many crudities, inconsistencies, and conflicts. In particular, we should remedy the evils growing out of our amazing tangle of statutory provisions relating to forbidden degrees of kinship and to void and voidable contracts. Then the age below which a marriage may not be contracted ought to be that of legal majority for both the man and the woman. “Majority” is the law’s simple device for securing mental maturity in the graver affairs of life. Is not wedlock as serious a business as making a will or signing a deed? Immature marriage is a fruitful source of evil; why should the parent, often ignorant or selfish, have the power of legalizing them by his consent?

In its administrative division our matrimonial laws require drastic revision at almost every point. We need a better and a uniform license system, so as to secure full publicity and faithful compliance with the spirit of the law. It should include an efficient plan for the collection, registration, and publication of vital statistics. For both the bride and the bride-

groom it should prescribe a reasonable term of previous residence in the district where the wedding is to occur. It should embrace a rigid requirement of civil banns, so that at least twenty days' published notice shall precede the issuance of the license.

To crown all, let us safeguard the office of marriage celebrant, so that, instead of a menace, it may become a powerful and conservative agent of social control. For the time-honored "American plan" of optional civil or religious ceremony, at the pleasure of the persons contracting, is crude, illogical, and unsafe. "There is the clergyman, and here is the justice of the peace; take your choice." That is the system in a nutshell. No standard of legal, mental, or moral fitness is established. Often this important function of social control is exercised with incredible ignorance and levity. The frivolous or mercenary magistrate and the Fleet parson flourish on American soil. It is said that the horrible cretins of Aosta are seldom in want of a priest to "solemnize" their nuptials, thus enabling them legally to propagate their loathsome kind. The story of our marriage resorts or Gretna Greens, so much more dangerous than our divorce colonies, shows that we have small reason to boast.

The fact is we are behind the times. European peoples have reached a wiser solution of the problem, prescribing in all cases without exception as the prerequisite of a valid marriage the obligatory celebration before an authorized civil officer, leaving the wedded pair to decide, as wholly a private matter, whether a religious ceremony shall follow.

A trained civil officer for the special business of solemnizing wedlock in his district! The idea may startle some people; but where can the merit-system be used to better advantage?

WHY GOOD MARRIAGE LAWS ARE A PREVENTIVE OF DIVORCE

Surely the foregoing discussion suggests the reason why good marriage laws are more effective in checking divorce than are good divorce laws. *They help to prevent the formation of bad marriages; and bad marriages are the only marriages which*

divorce dissolves. No happy marriage is destroyed by the divorce court. "You can't make people better by law" is a popular saying; but it is not true. You *can* make people better by law. For instance, good laws may remove temptations and create opportunities. A good marriage law is prevention—social prophylaxis; whereas a good divorce law is cure—social therapeutics.

Thus the lawmaker has a worthy function to perform in the development of social control. Yet, after all, the most effective social control of the household will consist in a properly informed public sentiment. Fill the minds of the young with social knowledge, and you will forestall domestic unrest and check household dissolution. There is crying need of a loftier ideal of the domestic relations. But the raising of ideals is a slow process. It will come only through a sound training in the problems of sex, parentage, and the household. Should not elementary education in these things be made compulsory? Then there is the great problem of providing competent leaders in this field. I wonder if the hour has come when the sociologist, the economist, the household scientist, and other specialists concerned should join forces in creating "The College of the Domestic Relations"? When in the fulness of time the new education has done its work, may it not be possible that the regenerated family group, disciplined and enlightened, may regain some portion of the functions which for the good of its members have passed under the control of the larger society?